

AMENDED IN SENATE MARCH 25, 2011

AMENDED IN SENATE MARCH 21, 2011

**SENATE BILL**

**No. 422**

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**Introduced by Senator Wright**

February 16, 2011

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An act to amend Section 121025 of the Health and Safety Code, relating to health reporting.

LEGISLATIVE COUNSEL'S DIGEST

SB 422, as amended, Wright. Reporting of certain communicable diseases.

Existing law prohibits the disclosure of public health records relating to HIV and AIDS, and the information contained in those records, with specified exceptions for public health purposes, including when the person who is the subject of the record is coinfectd with HIV/AIDS, tuberculosis, and a sexually transmitted disease, as specified, or when the disclosure is pursuant to a written authorization. Existing law requires a disclosure of these records or information to include only the information necessary for the purpose of the disclosure, and to be made only upon agreement that the information will be kept confidential and will not be further disclosed without written authorization.

This bill would expand, for specified public health purposes, the authority of local public health agencies to disclose information contained in public health records relating to HIV and AIDS, to include when the person who is subject of the record is HIV infected.

*The bill would also expand the disclosure of information for the purpose of investigation, control, or surveillance of HIV, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 121025 of the Health and Safety Code is amended to read:

121025. (a) Public health records relating to human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS), containing personally identifying information, that were developed or acquired by a state or local public health agency, or an agent of that agency, shall be confidential and shall not be disclosed, except as otherwise provided by law for public health purposes or pursuant to a written authorization by the person who is the subject of the record or by his or her guardian or conservator.

(b) In accordance with subdivision (f) of Section 121022, a state or local public health agency, or an agent of that agency, may disclose personally identifying information in public health records, as described in subdivision (a), to other local, state, or federal public health agencies or to corroborating medical researchers, when the confidential information is necessary to carry out the duties of the agency or researcher in the investigation, control, or surveillance of disease, as determined by the state or local public health agency.

(c) Except as provided in paragraphs (1) to ~~(3)~~ (4), inclusive, any disclosure authorized by subdivision (a) or (b) shall include only the information necessary for the purpose of that disclosure and shall be made only upon agreement that the information will be kept confidential and will not be further disclosed without written authorization, as described in subdivision (a).

(1) Notwithstanding any other provision of law, the following disclosures shall be authorized for the purpose of enhancing completeness of HIV/AIDS, tuberculosis, and sexually transmitted disease coinfection reporting to the federal Centers for Disease Control and Prevention (CDC):

(A) The local public health agency HIV surveillance staff may further disclose the information to the health care provider who provides HIV care to the HIV-positive person who is the subject of the record for the purpose of assisting in compliance with subdivision (a) of Section 121022.

(B) Local public health agency tuberculosis control staff may further disclose the information to state public health agency

1 tuberculosis control staff, who may further disclose the information,  
2 without disclosing patient identifying information, to the CDC, to  
3 the extent the information is requested by the CDC and permitted  
4 by subdivision (b), for purposes of the investigation, control, or  
5 surveillance of HIV infections or HIV and tuberculosis  
6 coinfections.

7 (C) Local public health agency sexually transmitted disease  
8 control staff may further disclose the information to state public  
9 health agency sexually transmitted disease control staff, who may  
10 further disclose the information, without disclosing patient  
11 identifying information, to the CDC, to the extent it is requested  
12 by the CDC, and permitted by subdivision (b), for the purposes of  
13 the investigation, control, or surveillance of HIV infections or HIV  
14 and syphilis, gonorrhea, or chlamydia coinfection.

15 (2) Notwithstanding any other provision of law, the following  
16 disclosures shall be authorized for the purpose of facilitating  
17 appropriate HIV/AIDS medical care and treatment:

18 (A) State public health agency HIV surveillance staff, AIDS  
19 Drug Assistance Program staff, and care services staff may further  
20 disclose the information to local public health agency staff, who  
21 may further disclose the information to the HIV-positive person  
22 who is the subject of the record, or the health care provider who  
23 provides his or her HIV care, for the purpose of proactively offering  
24 and coordinating care and treatment services to him or her.

25 (B) AIDS Drug Assistance Program staff and care services staff  
26 in the State Department of Public Health may further disclose the  
27 information directly to the HIV-positive person who is the subject  
28 of the record or the health care provider who provides his or her  
29 HIV care, for the purpose of proactively offering and coordinating  
30 care and treatment services to him or her.

31 (3) Notwithstanding any other provision of law, for the purpose  
32 of facilitating appropriate medical care and treatment of persons  
33 coinfectd with HIV, tuberculosis, and syphilis, gonorrhea, or  
34 chlamydia, local public health agency sexually transmitted disease  
35 control and tuberculosis control staff may further disclose the  
36 information to state or local public health agency sexually  
37 transmitted disease control and tuberculosis control staff, the  
38 HIV-positive person who is the subject of the record, or the health  
39 care provider who provides his or her HIV, tuberculosis, and  
40 sexually transmitted disease care.

1     (4) ~~For~~ *Notwithstanding any other law, state public health*  
2 *agency HIV surveillance staff, AIDS Drug Assistance Program*  
3 *staff, and care services staff may further disclose the information*  
4 *to local public health agency staff, who may further disclose the*  
5 *information to the HIV-positive person who is the subject of the*  
6 *record or the health care provider who provides his or her HIV*  
7 *care, for the purpose of the investigation, control, or surveillance*  
8 *of HIV.*

9     (5) *For the purposes of paragraphs (2) and (3), to (4), inclusive,*  
10 *“staff” does not include nongovernmental entities.*

11     (d) No confidential public health record, as defined in  
12 subdivision (c) of Section 121035, shall be disclosed, discoverable,  
13 or compelled to be produced in any civil, criminal, administrative,  
14 or other proceeding.

15     (e) (1) Any person who negligently discloses the content of  
16 any confidential public health record, as defined in subdivision (c)  
17 of Section 121035, to any third party, except pursuant to a written  
18 authorization, as described in subdivision (a), or as otherwise  
19 authorized by law, shall be subject to a civil penalty in an amount  
20 not to exceed five thousand dollars (\$5,000), plus court costs, as  
21 determined by the court, which penalty and costs shall be paid to  
22 the person whose record was disclosed.

23     (2) Any person who willfully or maliciously discloses the  
24 content of any confidential public health record, as defined in  
25 subdivision (c) of Section 121035, to any third party, except  
26 pursuant to a written authorization, or as otherwise authorized by  
27 law, shall be subject to a civil penalty in an amount not less than  
28 five thousand dollars (\$5,000) and not more than twenty-five  
29 thousand dollars (\$25,000), plus court costs, as determined by the  
30 court, which penalty and costs shall be paid to the person whose  
31 confidential public health record was disclosed.

32     (3) Any person who willfully, maliciously, or negligently  
33 discloses the content of any confidential public health record, as  
34 defined in subdivision (c) of Section 121035, to any third party,  
35 except pursuant to a written authorization, or as otherwise  
36 authorized by law, that results in economic, bodily, or  
37 psychological harm to the person whose confidential public health  
38 record was disclosed, is guilty of a misdemeanor, punishable by  
39 imprisonment in the county jail for a period not to exceed one year,  
40 or a fine of not to exceed twenty-five thousand dollars (\$25,000),

1 or both, plus court costs, as determined by the court, which penalty  
2 and costs shall be paid to the person whose confidential public  
3 health record was disclosed.

4 (4) Any person who commits any act described in paragraph  
5 (1), (2), or (3), shall be liable to the person whose confidential  
6 public health record was disclosed for all actual damages for  
7 economic, bodily, or psychological harm that is a proximate result  
8 of the act.

9 (5) Each violation of this section is a separate and actionable  
10 offense.

11 (6) Nothing in this section limits or expands the right of an  
12 injured person whose confidential public health record was  
13 disclosed to recover damages under any other applicable law.

14 (f) In the event that a confidential public health record, as  
15 defined in subdivision (c) of Section 121035, is disclosed, the  
16 information shall not be used to determine employability, or  
17 insurability of any person.